

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: SB 1090

INTRODUCER: Senator Richter

SUBJECT: Uniform Commercial Code

DATE: January 18, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Juliachs	Hrdlicka	CM	Favorable
2.	_____	_____	BI	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 1090 adopts the 2010 amendment to Article 9 of the Uniform Commercial Code (UCC). The bill provides the following changes to Article 9: revises statute as it relates to governing the name of a debtor for purposes of filing a financing statement; modifies definitions; revises s. 679.301, F.S., relating to the location of debtors; modifies provisions relating to guidelines for the continued perfection of security interests that were perfected according to the law of another jurisdiction; provides rules for transition to the proposed version of Article 9; and makes numerous stylistic and grammatical changes.

This bill amends the following sections: 679.1021, 679.1051, 679.3071, 679.3111, 679.3161, 679.3171, 679.326, 679.4061, 679.4081, 679.5021, 679.5031, 679.5071, 679.515, 679.516, 679.518, 679.607, 680.1031, F.S.

This bill creates: part VIII of ch. 679, F.S. consisting of ss. 679.801, 679.802, 679.803, 679.804, 679.805, 679.806, 679.807. and 679.808, F.S.

II. Present Situation:

Background

The Uniform Commercial Code (UCC) is a set of uniform laws regulating various business transactions and trade. The drafts of the code are developed by the Uniform Law Commissioners (ULC), who are members of the National Conference of Commissioners on Uniform State Laws, a group of scholars and business representatives. “Conference members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments, as well as the District of Columbia, Puerto Rico and the U.S Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.”¹ The term “uniform” refers to how the separate states of the Union have separately enacted the various parts of the Uniform Commercial Code in laws that are uniform to one another.

Participation in the conference is not limited to lawyers since “stakeholder” meetings are held, where the opinions of all groups concerned with a particular area can be heard.² Every state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands is assessed a specific amount for the maintenance of the ULC based upon state population. Florida’s assessment for 2009-2010 is \$96,700.³

Article 9 of the UCC governs secured transactions in personal property. A secured transaction is a “business arrangement by which a buyer or borrower gives collateral to the seller or lender to guarantee payment of an obligation.”⁴ In 1998, Article 9 was substantially revised and adopted by all states and U.S. territories, except Puerto Rico, where it is currently being considered.⁵ In 2010, the commission drafted and adopted amendments to Article 9.

The 2010 Amendments to Article 9 modify the existing statute to respond to filing issues and address other matters that have arisen in practice following passage of the 1998 version of Article 9. The Article 9 amendments have been adopted in Connecticut, Indiana, Minnesota, Nebraska, Nevada, North Dakota, Rhode Island, Texas, and Washington. They are also currently being considered in a number of other states and U.S. territories.⁶

¹ Information provided at: <http://www.nccusl.org/Update/DesktopDefault.aspx?tabindex=0&tabid=9> (last visited January 17, 2012).

² 2008 *Commission Annual Report*, p.10, available online: http://www.nccusl.org/nccusl/docs/AnnReport_08_web.pdf (last visited January 17, 2012).

³ 2009 *Annual Report of the Florida Commissioners to the National Conference on Uniform State Laws*, (January 2010) (report prepared by the Office of Legislative Services for submission to the Governor and both houses of the Legislature through their respective presiding officers.).

⁴ Black's Law Dictionary (9th ed. 2009).

⁵ Article is codified in Florida law in ch. 679, F.S. It was adopted in 2001 by ch. 2001-198 L.O.F.

⁶ Information provided at: <http://www.nccusl.org/Act.aspx?title=UCC Article 9 Amendments> (last visited January 17, 2012) (pending legislation in Washington D.C., Kentucky, Massachusetts, Oklahoma, and Puerto Rico).

Issues Concerning Filing

Identifying the Debtor

The purpose of the UCC filing system is to give notice to creditors and other interested parties that there is a valid, perfected security interest in property of the debtor.⁷ A security interest is a “property interest created by agreement or by operation of law to secure performance of an obligation” (i.e. payment of a debt).⁸ An individual or entity files a financing statement to notify third parties — typically prospective buyers and lenders — of a secured party’s security interest in goods or real property. Financing statements are indexed under the name of the debtor; therefore, an individual looking for a specific financing statement will search for it under the debtor’s name.

Section 679.5031(1), F.S., explains what constitutes the debtor’s name for purposes of a financing statement where the debtor is a registered organization,⁹ a decedent’s estate, or a trust or trustee acting with regard to property held in trust. Under current law, a financing statement sufficiently provides the name of a debtor that is a registered organization if it provides the name as indicated on the public record of the jurisdiction where the debtor organized. If the debtor is a decedent’s estate, the financing statement must provide the decedent’s name and indicate that the debtor is an estate. If the debtor is a trust or trustee acting with regard to property held in trust, the financing statement must:

- Provide the name for the trust in its organic record or, if no name is specified, the settlor’s name and additional information to distinguish the debtor from other trusts with one or more of the same settlors; and
- Indicate in the debtor’s name or otherwise that the debtor is a trust or trustee acting for trust property.

In other cases, if the debtor has a name, current law requires the financing statement to provide the debtor’s individual or organizational name. If the debtor does not have a name, it must provide the names of the partners, members, associates, or other persons comprising the debtor.

Claim Concerning Inaccurate or Wrongfully Filed Record

Current law authorizes the debtor to file a correction statement: a claim that a financing statement filed against it was in fact unauthorized.¹⁰ While this filing has no legal effect on the underlying claim, it does put in the public record the debtor’s claim that the financing statement was wrongfully filed.

⁷ See *Matter of Glasco, Inc.*, 642 F.2d 793, 795 (5th Cir. 1981).

⁸ Black’s Law Dictionary (9th ed. 2009).

⁹ Current law provides that a registered organization is “an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.” See. S. 679.1021(1)(qqq), F.S.

¹⁰ Section 679.518, F.S.

Perfection of Security Interests

“Perfection of a security interest gives constructive notice to the world of the claim or interest of the one asserting it.”¹¹ Article 9 provides guidelines for the continued perfection of security interests that have been perfected according to the law of another jurisdiction.¹² Generally, a security interest perfected according to another jurisdiction’s or state’s law is not automatically “unperfected.” Current law provides that a security interest perfected by filing continues for 4 months after the jurisdiction in which the debtor is located changes. However, this temporary period of perfection applies only with respect to collateral owned by the debtor at the time of the change. Even if the security interest attaches to after-acquired collateral, there is currently no perfection with respect to such new collateral, unless and until the secured party perfects pursuant to the law of the new jurisdiction.

Control of Electronic Chattel Paper

Current law provides that control of electronic chattel paper is the functional equivalent of possession of tangible chattel paper. “Chattel paper” is a record or records that show both a monetary obligation and a security interest in specific goods.¹³ “Electronic chattel paper” is “chattel paper evidenced by record or records consisting of information stored in an electronic medium.”¹⁴ Current law provides that a secured party has control of electronic chattel paper if the record comprising the chattel paper are created, stored and assigned according to six requirements.¹⁵

III. Effect of Proposed Changes:

Section 1 amends s. 679.1021, F.S., to revise the definitions of “authenticate” and “certificate of title,” as well as insert a new definition for “public organic record.”

The definition for “authenticate” will now mean to sign or, “with the present intent, to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.”

“Certificate of title” is also amended to specify that the “term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest at issue to be indicated on the record as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.”

Lastly, this section defines a “public organic record” as follows: a record that is available to the public for inspection that is as follows: a record consisting of the record initially filed with or

¹¹ *Bay Co. Sheriff's Office v. Tyndall Fed. Credit Union*, 738 So. 2d 456, 458 (Fla. 1st DCA 1999).

¹² Section 679.3161, F.S.

¹³ Section 679.1021(1)(k), F.S.

¹⁴ Section 679.1021(1)(ee), F.S.

¹⁵ See s. 679.1051, F.S.

issued by a state or the United States (U.S.) to form or organize an organization and any record filed with or issued by the state or the United States that amends or restates the initial record; an organic record of a business trust consisting of the record initially filed with a state and any record filed with the state that amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or a record consisting of legislation enacted by the Legislature of a state or U.S. Congress that forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States that amends or restates the name of the organization.

Section 2 amends s. 679.1051, F.S., to specify that a secured party has control of electronic chattel paper if a system employed for evidencing the transfer or interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

Additionally, copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party. Also, all references to “revisions” are replaced with the term “amendments.”

Section 3 amends s. 679.3071, F.S., to specify that an organization may designate its state of location by designating its main office, home office, or other comparable office.

Section 4 amends s. 679.3111, F.S., by clarifying the requirement of a certificate of title under current law when the statute of a particular jurisdiction requires such a document as a condition to filing.

Section 5 amends s. 679.3161, F.S., by revising the law as it relates to the effect of a change in governing law to the collateral of a security interest within 4 months after a debtor changes its location to another jurisdiction.

As such, a financing statement filed before the change of the debtor’s location pursuant to the law of the jurisdiction designated is effective to perfect a security interest in the collateral if the financing statement would have been effective had the debtor not changed its location. In such cases, if a security interest that is perfected becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated or the 4 month period, then it remains perfected. However, if the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Additionally, if a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated and the new debtor is located in another jurisdiction, then the financing statement is effective to perfect a security interest in collateral in which the new debtor has or acquires right within 4 months after the new debtor becomes bound. This rule is subject to the condition that the financing statement would have been effective to perfect a security interest in the collateral if the collateral had been acquired by the original debtor.

Similarly, a security interest for a new debtor that is perfected by the financing statement and that becomes perfected under the law of the other jurisdiction before the earlier of the expiration

of the 4 month period or the time the financing statement would have become ineffective under the law of the jurisdiction designated remains perfected. Conversely, a security interest that is perfected by the financing statement, but that does not become perfected under the law of the other jurisdiction before the earlier time or event, becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Section 6 amends s. 679.3171, F.S., by referring to accounts, electronic chattel paper, electronic documents, general intangibles, or investment property as collateral. As such, a licensee of a general intangible or a buyer, but not a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certified security takes free of a security interest, if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

Section 7 amends s. 679.326, F.S., to provide that a security interest that is created by a new debtor in collateral for which the new debtor has or acquires rights and is perfected by a filed financing statement that would be ineffective to perfect the security interest but for the application of some other specified statute found in this chapter is subordinate to a security interest in the same collateral that is perfected other than by such a filed financing statement.

Section 8 amends s. 679.4061, F.S., to provide that the limitations reflected in subparagraph (4) do not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under s. 679.610, F.S., or an acceptance of collateral under s. 679.620, F.S.

Section 9 amends s. 679.4081, F.S., to provide that restrictions on assignments of promissory notes concerning health-care insurance receivable apply only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under s. 679.610, F.S., or an acceptance of collateral, under s. 679.620, F.S.

Section 10 amends 679.5021, F.S., to specify that the record of a mortgage satisfies the requirements for a financing statement, although it need not indicate that it is to be filed in the real property records, and provides the individual name of the debtor or the surname and first personal name of the debtor.

Section 11 amends s. 679.5031, F.S., to provide that a financing statement sufficiently provides the name of the debtor when the debtor is a registered organization or the collateral is held in a trust that is a registered organization only if the financing statement provides the registered organization's name on the public organic record most recently filed with, issued, or enacted by the registered organization's jurisdiction of organization that purports to state, amend, or restate the registered organization's name.

Similarly, if the collateral is being administered by the personal representative of a decedent, the financing statement is sufficient if it provides, as the name of the debtor, the name of the decedent, and in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative.

In contrast, if the collateral is held in a trust that is not a registered organization, a financing statement will sufficiently provide the name of the debtor if the financing statement provides for

the name of the trust as reflected in the organic record or, if the name is not specified, then the name of the settlor or testator. Additionally, a document will also be considered sufficient if in a separate part of the financing statement the name is provided indicating that the collateral is held in trust or provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlor or the same testator, which indicates that their collateral is held in a trust.

Additionally, a financing statement will sufficiently provide the name of the debtor if the debtor is an individual to whom this state has issued a driver license or personal identification card that has not expired and that name matches the one reflected in the financing statement. Also, if the individual does not have a driver license or personal identification card, then the financing statement will be sufficient if it provides the individual name of the debtor or the surname and first personal name of the debtor and, in the case of an organization, the organization's name. Likewise, if the debtor does not have a name, then a financing statement will sufficiently provide the name of the debtor if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

Finally, the name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the name of the decedent. Also, if the state has issued to an individual more than one driver license or personal identification card, then the one most recently issued is the one to be used.

As used in this section the term "name of settlor" means a registered organization, the name of the registered organization indicated on the public organic record filed with or issued or enacted by the registered organization's jurisdiction of organizational or, in other cases, the name of the settler or testator indicated in the trust's organic record.

Section 12 amends s. 679.5071, F.S., to provide that if the name in a filed financing statement provided for a debtor becomes insufficient as the name of the debtor, then the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within 4 months after, the filed financing statement becomes seriously misleading. Similarly, the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the filed financing statement becomes seriously misleading, unless an amendment which renders the financing statement not seriously misleading is filed within 4 months after that event.

Section 13 amends s. 679.515, F.S., to provide that if a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

Section 14 amends s. 679.516, F.S., to replace the term "correction statement" with "information statement." Furthermore, filing does not occur with respect to a record that a filing office refuses to accept because, in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not provide a mailing address for the debtor or indicate whether the name provided as the name of the debtor is the name of an individual or an organization.

Section 15 amends s. 679.518, F.S., to update references to “information statement,” as well as provide that a person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so.

Additionally, an information statement under this section must do the following: identify the record to which it relates by file number assigned to the initial financing; indicate that it is an information statement; and provide the basis for the person’s belief that the record is inaccurate and indicate the manner in which the person believes the basis for the person’s belief that the record was wrongfully filed.

Section 16 amends s. 679.607, F.S., to specify that a secured party’s sworn affidavit in recordable form stating that a default has occurred with respect to the obligation secured by the mortgage, among other things, is required in order to enforce a mortgage nonjudicially outside this state.

Section 17 creates Part VIII of ch. 679, F.S., consisting of ss. 679.801, 679.802, 679.803, 679.804, 679.805, 679.806, 679.807. and 679.808, F.S.

Section 678.801, F.S., creates a saving clause stating that, except as otherwise provided in this part, this part applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2013. Amendments to this chapter by this act do not affect an action, case, or proceeding commenced before July 1, 2013.

Section 679.802, F.S., provides that a security interest that is a perfected security interest immediately before July 1, 2013, is a perfected security interest under this chapter, on July 1, 2013, if the applicable requirements for attachment and perfection under this chapter are satisfied without further action. Note that if the applicable requirements for perfection under this chapter are not satisfied on July 1, 2013, then the security remains perfected thereafter only if the applicable requirements for perfection are satisfied no later than July 1, 2014.

Section 679.803, F.S., specifies that a security interest that is an unperfected security interest immediately before July 1, 2013, becomes a perfected security interest without further action on July 1, 2013, if the applicable requirements for perfection under this chapter are satisfied or when the applicable requirements for perfection are satisfied, if the requirements are satisfied after that time.

Section 679.804, F.S., provides that the filing of a financing statement before July 1, 2013, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this chapter. Amendments to this chapter do not render ineffective an effective financing statement that was filed before July 1, 2013, and satisfied the applicable requirements for perfection under the law of the jurisdiction governing perfection as it existed before July 1, 2013.

However, except as otherwise provided, the financing statement ceases to be effective under the following circumstances: the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had this act not taken effect; or if the financing statement is filed in another jurisdiction, at the earlier of, the time the financing statement would have ceased to be effective under the law of that jurisdiction or by June 30, 2018.

Note that the June 30, 2018, filing date applies to a financing statement that was filed before July 1, 2013, against a transmitting utility that satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this chapter as it existed before July 1, 2013, to the extent that this chapter provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

The filing of a continuation statement on or after July 1, 2013, does not continue the effectiveness of the financing statement filed before July 1, 2013. However, on the timely filing of a continuation statement on or after July 1, 2013, and in accordance with the law of the jurisdiction governing perfection, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2013, continues for the period provided by the law of that jurisdiction.

A financing statement that includes a financing statement filed before July 1, 2013, or a continuation statement filed on or after July 1, 2013, is effective only to the extent that it satisfies the requirements of part V, as amended by this act, for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust, as amended by this act.

Section 679.805, F.S., provides that the filing of an initial financing statement with the Clerk of Court or Florida Secured Transaction Registry continues the effectiveness of a financing statement filed before July 1, 2013, under the following circumstances: the filing of an initial financing statement in that office would be effective to perfect a security interest under this chapter; the financing statement filed before July 1, 2013, was filed in an office in another state; and the initial financing statement satisfied certain requirements

To be effective, an initial financing statement must meet the following additional requirements: satisfy the requirements of part IV, as amended by this act, for an initial financing statement; identify the filing statement filed before July 1, 2013, by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and indicate that the financing statement filed before July 1, 2013, remains ineffective..

The filing of an initial financing statement continues the effectiveness of the financing statement filed before July 1, 2013: the initial financing statement is filed before July 1, 2013, for the period provided in the statute, as it existed before its amendment by this act, with respect to an

initial financing statement and the initial financing statement is filed on or after July 1, 2013, for the period provided in this act with respect to an initial financing statement.

Section 679.806, F.S., provides that on or after July 1, 2013, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a financing statement only filed before July 1, 2013, in accordance with the law of the jurisdiction governing perfection as provided in this chapter. However, the effectiveness of a financing statement filed before July 1, 2013, also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

Unless as otherwise provided, if the law of this state governs perfection of a security interest, the information in a financing statement filed before July 1, 2013, may be amended after July 1, 2013, only as follows: the financing statement is filed before July 1, 2013, and an amendment is filed with the Clerk of Court or the Florida Secured Transaction Registry; an amendment is filed in that office concurrently with, or after the filing in that office, of an initial financing statement that satisfies s. 679.805(3), F.S., or an initial financing statement that provides the information as amended and satisfies s. 679.805(3), F.S., is filed in the office.

Lastly, if the law of this state governs perfection of a security interest, the effectiveness of a financing statement filed before July 1, 2013, may be continued only under s. 679.804(3) and (5), F.S., or s. 679.805, F.S. Irrespective of whether or not the law of this state governs perfection of a security interest, the effectiveness of a financing statement filed in this state before July 1, 2013, may be terminated on or after July 1, 2013, by filing a termination statement in the office in which the financing statement filed before July 1, 2013, is filed, unless an initial financing statement that satisfied s. 679.805(3), F.S., has been filed in the office specified by the law of the jurisdiction governing perfection as provided in this chapter as the office in which to file a financing statement.

Section 679.807, F.S., specifies that a person may file an initial financing statement or a continuation statement under this part to continue the effectiveness of a financing statement filed before July 1, 2013, or perfect or continue the perfection of a security interest.

Section 679.808, F.S., states that this part and the amendments to this chapter made by this act determine the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2013, this chapter as it existed before July 1, 2013, determines priority.

Section 18 amends s. 680.1031, F.S., to correct a cross-reference.

Section 19 creates an undesignated section directing the Division of Statutory Revision to replace the phrase “this act” wherever it occurs in certain enumerated sections within the assigned chapter number of the act.

Section 20 provides that this act shall take effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.